

SCHENCK, PRICE, SMITH & KING, LLP

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Attorneys for Defendant Progressive Casualty Insurance Company

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BCB BANCORP, INC., individually, and as
successor-in-interest to PAMRAPO BANCORP,
INC.; KENNETH D. WALTER; KENNETH
POESL; ROBERT DORIA; DANIEL
MASSARELLI; PATRICK CONAGHAN;
HERMAN BROCKMAN; and THE ESTATE OF
JOHN MORECRAFT,

Plaintiffs,

vs.

PROGRESSIVE CASUALTY INSURANCE
COMPANY; COLONIAL AMERICAN
CASUALTY AND SURETY COMPANY; KEITH
KUBE; AND DAVID SHAEV PROFIT SHARING
ACCOUNT F/B/O DAVID SHAEV,

Defendants.

Civil Action No.

NOTICE OF REMOVAL

(Removed from:
Superior Court of New Jersey
Law Division: Hudson County
Docket No. L-000605-13)

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, defendant Progressive Casualty Insurance Company (“Progressive”) hereby removes this action from the Superior Court of New Jersey, Law Division: Hudson County (the “State Court”), to the United States District Court for the District of New Jersey, Newark Vicinage. In support of this Notice of Removal, Progressive states as follows:

1. Plaintiffs commenced this action by the filing in the State Court on or about February 1, 2013, of a Complaint, Designation of Trial Counsel and Certifications in the action styled *BCB Bancorp, Inc. v. Progressive Casualty Insurance Company*, Docket No. L-000605-13

(the “State Court Action”). A copy of plaintiffs’ Complaint, Designation of Trial Counsel and Certifications, which constitutes all process, pleadings and orders received by Progressive in the State Court Action, is attached to the accompanying Certification of John P. Campbell as Exhibit “A.”

2. As to defendants Progressive and Colonial American Casualty and Surety Company (“Colonial American”), plaintiffs allege breach of contract and seek declaratory judgments on questions of insurance coverage. Plaintiffs assert no causes of action against and seek no relief from nominal defendants Keith Kube and David Shaev Profit Sharing Account F/B/O David Shaev, both of whom are the plaintiffs in the consolidated shareholder derivative action as to which plaintiffs seek insurance coverage from Progressive and/or Colonial American. Kube and the David Shaev Profit Sharing Account are not parties to either of the insurance policies at issue herein and their presence as parties is unnecessary to the litigation of the insurance coverage disputes at issue.

3. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332. The amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and complete diversity of citizenship exists between all parties after disregarding the citizenship of the nominal defendants. Upon information and belief, at the time of the filing of this Notice of Removal, and at the time of the commencement of this action:

- a. Plaintiff BCB Bancorp, Inc. is a corporation organized and existing under the laws of New Jersey, with a principal place of business in Bayonne, New Jersey.

- b. Pamrapo Bancorp, Inc., as to whom BCB Bancorp, Inc. is the successor-in-interest, was a corporation organized and existing under the laws of New Jersey, with a principal place of business in Bayonne, New Jersey.
- c. Plaintiff Kenneth D. Walter is a citizen of New Jersey.
- d. Plaintiff Kenneth Poesl is a citizen of New Jersey.
- e. Plaintiff Robert Doria is a citizen of New Jersey.
- f. Plaintiff Daniel Massarelli is a citizen of New Jersey.
- g. Plaintiff Patrick Conaghan is a citizen of New Jersey.
- h. Plaintiff Herman Brockman is a citizen of New Jersey.
- i. Plaintiff Estate of John Morecraft is deemed a citizen of New Jersey pursuant to 28 U.S.C. § 1332(c)(2).
- j. Progressive is a corporation organized and existing under the laws of Ohio, with a principal place of business in Mayfield Village, Ohio.
- k. Defendant Colonial American is a corporation organized and existing under the laws of Maryland, with a principal place of business in Owings Mills, Maryland.
- l. Defendant Keith Kube is a nominal defendant whose citizenship is unknown. Because he is a nominal defendant, Kube's citizenship must be disregarded for purposes of determining this Court's subject matter jurisdiction pursuant to 28 U.S.C. 1332. *See Bumberger v. Ins. Co. of N. Am.*, 952 F.2d 764, 767 (3d Cir. 1991).
- m. Defendant David Shaev Profit Sharing Account F/B/O David Shaev is a nominal defendant whose citizenship is unknown. Because it is a nominal

defendant, the David Shaev Profit Sharing Account's citizenship must be disregarded for purposes of determining this Court's subject matter jurisdiction pursuant to 28 U.S.C. 1332. *See Bumberger v. Ins. Co. of N. Am.*, 952 F.2d 764, 767 (3d Cir. 1991).

4. Defendant Colonial American consents to Progressive's removal of this action. A letter from counsel to Colonial American to this Court confirming this consent is attached to the accompanying Certification of John P. Campbell as Exhibit "B."

5. For the independent reasons that they are nominal defendants and because, on information and belief, plaintiffs have not effected service upon them, the consent of defendants Keith Kube and David Shaev Profit Sharing Account F/B/O David Shaev to this Notice of Removal is not required. *See Michaels v. State*, 955 F. Supp. 315, 319 (D.N.J. 1996).

6. Progressive first received notice of the filing of the State Court Action on February 1, 2013, and accepted service on February 27, 2013. This Notice of Removal therefore is timely filed pursuant to 28 U.S.C. § 1446.

7. The State Court from which Progressive removes the State Court Action is in this District and Vicinage.

8. Written notice of the filing of this Notice of Removal will be served upon counsel for the plaintiffs and Colonial American consistent with 28 U.S.C. § 1446(d).

9. A true copy of this Notice of Removal will be filed promptly with the Clerk of the Superior Court of New Jersey, Law Division, Hudson County, consistent with 28 U.S.C. § 1446(d).

10. This Notice of Removal is filed in accordance with the requirements of 28 U.S.C. § 1446.

11. In filing this Notice of Removal, Progressive does not waive any defects in venue or personal jurisdiction, and specifically preserves and incorporates herein all affirmative defenses enumerated in Fed. R. Civ. P. 12.

WHEREFORE, Progressive hereby gives notice that the action pending against it in the Superior Court of New Jersey, Law Division, Hudson County, styled *BCB Bancorp, Inc. v. Progressive Casualty Insurance Co.*, Docket No. L-000605-13, is removed to the United States District Court for the District of New Jersey, Newark Vicinage. No further proceedings should be had in the State Court.

Dated: March 1, 2013

SCHENCK, PRICE, SMITH & KING, LLP
*Attorneys for Defendant Progressive
Casualty Insurance Company*

By: s/ John P. Campbell (JC 8746)
Michael K. Mullen
John P. Campbell

CERTIFICATE OF SERVICE

I hereby certify that an original and one true and correct copy of the foregoing Civil Cover Sheet, Notice of Removal, Certification of John P. Campbell, and Rule 7.1 Statement of Progressive Casualty Insurance Company has been electronically filed with the Clerk of the United States District Court for the District of New Jersey and served on the following this 1st day of March, 2013, by electronic mail and certified mail, return receipt requested, postage prepaid:

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Dated: March 1, 2013

SCHENCK, PRICE, SMITH & KING, LLP
*Attorneys for Defendant Progressive
Casualty Insurance Company*

By: s/ John P. Campbell (JC 8746)
Michael K. Mullen
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